

Ronald M. Horwitz (005655)
Janessa E. Koenig (018618)
Amy M. Horwitz (027642)
JABURG & WILK, P.C.
3200 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012
rmh@jaburgwilk.com
jek@jaburgwilk.com
axh@jaburgwilk.com
(602) 248-1000

Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

MARGARET CATHERINE PURCELL

Debtor.

Ch. 13

Case No. 4-10-bk-19303-JMM

WELLS FARGO BANK, N.A.,

v

**OBJECTION TO CONFIRMATION OF
DEBTOR'S CHAPTER 13 PLAN**

MARGARET CATHERINE PURCELL and
DIANNE C. KERNS, Trustee.

Respondents.

WELLS FARGO BANK, N.A., by and through its attorneys RONALD M. HORWITZ of JABURG & WILK, P.C., hereby objects to confirmation of the above-captioned Debtor's Chapter 13 Plan, on the grounds that the plan fails to comply with the requirements of 11 U.S.C. § 1322 and 1325. This objection is supported by the contents of the petition, the Chapter 13 Statement, Chapter 13 Plan on file with this Court, and by the Memorandum of Points and Authorities attached to and by this reference incorporated herein.

Respectfully submitted this 22nd day of July, 2010.

JABURG & WILK, P.C.

S/ Ronald M. Horwitz
Ronald M. Horwitz
Janessa E. Koenig
Amy M. Horwitz
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS:

On or about June 21, 2010, MARGARET CATHERINE PURCELL, (hereinafter "Debtor's"), filed a Petition for Relief under Chapter 13 of the Bankruptcy Code.

As evidenced by the valid and perfected Note and Deed of Trust attached hereto and to its Proof of Claim, WELLS FARGO BANK, N.A., has a secured claim against the Debtor fails in the amount set forth in its Proof of Claim, plus accrued and accruing interest, costs and attorneys' fees. The security for the indebtedness due and owing from the Debtor to WELLS FARGO BANK, N.A., is a valid and perfected second Deed of Trust on the Debtor's real property located at 2921 S. Quinn Drive, Tucson, AZ 85730.

While the Debtor's plan is silent, the schedules indicate that the value of the subject real property is insufficient to secure all prior perfected liens and appears to treat WELLS FARGO's claim as unsecured. Accordingly, it appears that the plan provides that the Debtor intends to avoid WELLS FARGO's lien upon confirmation of the Plan.

LEGAL ARGUMENT:

As a secured Creditor of the Debtor, WELLS FARGO is "a party in interest" entitled to object to confirmation of the plan under 11 U.S.C. § 1324.

A. DEBTOR'S PLAN FAILS TO COMPLY WITH THE STATUTORY REQUIREMENTS FOR CONFIRMATION SET FORTH IN CHAPTER 13.

WELLS FARGO disputes the Debtor's assertion that the value of the real property is insufficient to secure all prior liens on the subject property. WELLS FARGO believes that the property has a value of \$142,000.00 and accordingly, has equity above the first Deed of Trust. See Brokers Price Opinion attached hereto and incorporated herein by reference. Accordingly, it is WELLS FARGO's position that its claim cannot be modified and treated as unsecured.

As set forth above, the plan proposed by the Debtor fails the standards for confirmation set forth in § 1325. The Debtor has abused the purpose of Chapter 13 relief, and has not proposed a good faith plan of payment to creditors.

Respectfully submitted this 22nd day of July, 2010.

JABURG & WILK, P.C.

s/ Ronald M. Horwitz
Ronald M. Horwitz
Janessa E. Koenig
Amy M. Horwitz
Attorneys for Plaintiff

COPY of the foregoing mailed
this 22nd day of July, 2010 to:

MARGARET CATHERINE PURCELL
6231 E. 33rd St.
Tucson, AZ 85711

BRUCE D. BRIDEGROOM
Bridegroom & Hayes
1656 N. Columbus Blvd.
Tucson, AZ 85712

DIANNE C. KERNS
7320 N. La Cholla #154 PMB 413
Tucson, AZ 85741-2305

s/ Jeanette Chavez